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Overall progress achieved since the United Nations Conference on Environment and Development

Report of the Secretary-General

Addendum

International legal instruments and mechanisms*

(Chapter 39 of Agenda 21)

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INTRODUCTION

1. The present report reviews progress made in the implementation of the objectives set out in chapter 39 of Agenda 21 (International legal instruments and mechanisms),[1] taking into account the decisions taken by the Commission on Sustainable Development on this subject in 1994 and 1996 at its second and fourth sessions respectively. The report focuses on three main developments related to international legal instruments and mechanisms, which represent important areas in international law for sustainable development, subsequent to the United Nations Conference on Environment and Development in 1992. A separate report (see document E/CN.17/1997/8) is provided on the application and implementation of the principles of the Rio Declaration on Environment and Development.[2]

I. SELECTING KEY OBJECTIVES

2. Three key objectives are addressed below: the first is the development of international law for sustainable development through, inter alia, treaty-making, in particular on a universal basis (chap. 39, paras. 1 (a) and (f), 2, 3 (b) and 5); the second is the recognition of the special situation of developing countries, through, inter alia, effective participation in negotiation of international sustainable development instruments, capacity-building and financial assistance (chap. 39, paras. 1 (c) and (d), 3 (a), (c) and (e) and 9); and the third is coordination and cooperation in the implementation of international agreements in the field of sustainable development, including cooperation among the secretariats of relevant conventions, within the context of procedures allowed by their respective conferences of the parties (chap. 39, paras. 1 (b) and 3 (d), (f) and (g)).

II. REPORTING ON AND ANALYSING SUCCESSES

Development of international law for sustainable development

3. Since the concept of sustainable development was promoted by the 1987 Brundtland report,[3] and later elaborated in Agenda 21 and the Rio Declaration, a number of attempts have been made to understand its meaning in the context of international law. There is a growing recognition that integration and interrelation are at the heart of sustainable development. They constitute the underlying theme of the Rio Declaration and Agenda 21, and consequently of the development of international law for sustainable development. Together they reflect the interdependence of social, economic, environmental, institutional and human rights issues that define sustainable development. The notion of integration implied in international law on sustainable development law may lead to the introduction of conceptual coherence into the more traditional, segregated fields of international law; at the same time, the concepts and requirements of sustainable development may also have an influence on and transform these fields. The concept of sustainable development has the potential to set the framework for harmonized, coherent national measures and actions. International law for sustainable development may also contribute to

greater coherence and complementarity between international and national law, policies and action (see box 1).

Box 1. Ramsar and World Heritage Conventions

An example of the development of international law for sustainable development is the progress in the context of the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat. The Convention, which entered into force in 1975, originally focused exclusively on preserving wetlands as waterfowl habitats, but has developed extensively over time to acknowledge the importance of wetlands for their biodiversity and their other ecological and environmental functions. It is recognized that for a successful implementation of the Ramsar Convention the simultaneous imperatives of economic development and environmental protection need to be reconciled. States need to be made aware of the importance of wetlands preservation and about new ways to allow development to proceed without destroying wetlands in the process.

Another illustration is provided by the World Heritage Convention (Convention for the Protection of the World Cultural and Natural Heritage), which notes not only that "the cultural heritage and the natural heritage are increasingly threatened with destruction" but also that this heritage is a shared heritage of humankind. The World Heritage Fund provides one mechanism to protect sites of outstanding universal value recognizing the special situation of developing countries. In recent years, the implementation of the Convention has shown the recognition of indigenous populations and traditional land-use systems, mainly through the inclusion of cultural landscapes in the World Heritage List.

4. Since the United Nations Conference on Environment and Development, some key international agreements in the field of sustainable development have entered into force, and new instruments have been negotiated, on both regional and global scales. They attempt to integrate environmental and developmental issues as opposed to undertaking more traditional sectoral approaches. There are also agreements that, while focused on other areas, such as trade, take aspects of sustainable development into account (see box 2). Furthermore, a large number of international legal instruments have undergone such changes in status as stem from new signatories, new ratifications, new parties, new protocols, amendments and relevant decisions of their conference of the parties.

5. The two treaties opened for signature at the United Nations Conference on Environment and Development, the Convention on Biological Diversity[4] and the United Nations Framework Convention on Climate Change,[5] both entered into force with unprecedented speed and wide acceptance. The United Nations Convention on Biological Diversity was adopted on 5 June 1992, and entered into force on 29 December 1993. As of mid-December 1996, there were 165 parties to the Convention. The United Nations Framework Convention on Climate Change was adopted on 9 May 1992, and entered into force on 21 March 1994. As of mid-December 1996, there were 164 parties to the Convention. They both endorse

and elaborate on the concept of sustainable development, by explicitly including notions of equity, common concern of humankind, and common but differentiated responsibilities, among others. Their substantive elements embody obligations related, inter alia, to burden-sharing, financing, transfer of technology and concerted strategies, which give concrete application to the concept of sustainable development.

Box 2. Convention on Nuclear Safety and North American Free Trade Agreement (NAFTA)

Paragraph 7 of chapter 39 of Agenda 21 calls for ongoing efforts to be made to conclude the ongoing negotiations for a nuclear safety convention in the framework of the International Atomic Energy Agency. The Convention on Nuclear Safety was opened for signature on 20 September 1994, and entered into force on 24 October 1996. It is the first legal instrument that directly addresses the issue of the safety of nuclear power plants worldwide. It foresees, among other things, the submission of safety reports by the States concerned which will be examined at peer review meetings to be held at regular intervals.

The North American Free Trade Agreement (NAFTA) and its two side agreements on the environment and labour (the North American Agreement on Environmental Cooperation and the North American Agreement on Labor Cooperation), are an example of a regional instrument that seeks to integrate social and economic components.

6. In addition to binding instruments or mechanisms, customary law and acts of international organizations are important for the development of international law for sustainable development. Also new covenants, international standards, codes of conduct and guidelines related to sustainable development have been promoted that also reflect the trend towards integration of environment and development concerns (see box 3). The importance of the involvement of international financial institutions and business and industry in this area is being increasingly recognized.

Box 3. Code of Ethics on the International Trade in Chemicals

The development of the international Code of Ethics on the International Trade in Chemicals: Principles and Guidance for Industry and Other Private Sector Parties to Enhance Chemical Safety (Nairobi, UNEP, 1994), as initiated by the United Nations Environment Programme (UNEP), which includes principles and guidance for industry and other private sector parties with respect to enhancing chemical safety, is an indication of the growing awareness by the private sector of the need to voluntarily adhere to and promote international standards for the protection of the environment.

III. PROMISING CHANGES AND DEVELOPMENTS

Development of international law for sustainable development

7. Increasing attention has been paid to the identification and elaboration of concepts and principles in international law related to sustainable development, based on the principles of the Rio Declaration. This could have practical consequences, for example, in facilitating and stimulating the development of new legal instruments, as well as in the implementation, interpretation and harmonization of existing instruments. Increasingly, the principles of the Rio Declaration are being reflected in national laws as well.

8. Another example of a promising change in the development of international law for sustainable development is the increased awareness of the need for effectiveness, as illustrated by the growing interest in issues of implementation, compliance, dispute avoidance and dispute settlement (see box 4). Chapter 39, paragraph 10, of Agenda 21 calls for the further study of dispute avoidance and settlement methods. The various initiatives undertaken in this field, in particular aiming at dispute avoidance procedures and mechanisms including arbitration, and at the development of transparent and non-confrontational multilateral consultative procedures, are under discussion in multiple international forums.

Box 4. United Nations Framework Convention on Climate Change

Recent treaties provide parties with a range of options for encouraging implementation and settling of disputes. The United Nations Framework Convention on Climate Change relies on a Subsidiary Body for Implementation to assist Parties in the effective implementation of the Convention, and it envisages the settlement of disputes through negotiation or any other peaceful means chosen by the Parties, submission to the International Court of Justice, arbitration or conciliation. The establishment of a multilateral consultative process is also under current consideration. Its exact form, content and nature will be known at a later stage.

Recognition of the special situation of developing countries

9. Principle 6 of the Rio Declaration states that priority shall be given to the special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable. This idea is also incorporated in a wide variety of international legal instruments, especially in those negotiated during or after the United Nations Conference on Environment and Development. It reflects the interdependence among countries in striving for sustainable development.

10. The category of States with economies in transition emerged in the international agenda when the preparatory work of the United Nations Conference on Environment and Development had already started. However, during the United Nations Conference on Environment and Development, the specific environmental

and economic problems of those countries were recognized, and afterwards some legal instruments included special provisions for countries with economies in transition.

11. States with economies in transition are actively participating in the development and implementation of regional conventions and related protocols in the field of air pollution, water management, industrial accidents, environmental impact assessment and public participation. These instruments, administered by the Economic Commission for Europe (ECE), are playing an important role in integrating these countries into a pan-European legal and economic space.

12. Most recent international legal instruments and mechanisms in the field of sustainable development take into account the specific situation of developing countries and their differentiated responsibilities (see box 5). They support the need for assistance, including, for example, funding for participation in the negotiation of international legal instruments and for participation in meetings of treaty bodies after signing and ratification. These treaties often provide for technology transfer and cooperation, financial resources and the creation or designation of a financial mechanism for implementation of the treaty. Also, developing countries in some cases receive financial assistance to participate in meetings and workshops related to international legal instruments and mechanisms, organized by, inter alia, international organizations, Governments and non-governmental organizations.

13. Additional means for recognizing the special situation of developing countries involve, for example, adjusted time schedules for implementation. New techniques have been developed, for example, the provision of "compensatory" finance to be made available to developing countries to enable them to meet certain incremental costs of implementing their obligations. This, in turn, has led to the creation of new funding arrangements at existing institutions, such as the Global Environment Facility.

Coordination and cooperation in the implementation of international agreements in the field of sustainable development

14. Two types of coordination among conventions related to sustainable development can be distinguished. One type encompasses coordination at the administrative level, which will be discussed in the section on unfulfilled expectations; the other, coordination of substantive issues (discussed below).

15. There has been an increasing proliferation of global, regional and bilateral environmental treaties in the last decade. Other areas of law, such as human rights, labour and trade law, have also experienced an expansion of international legal instruments. The objectives of many of these instruments are related and, in some cases, interdependent or overlapping, within the overall context of sustainable development. The same is true of the activities required for their respective implementations. The trend towards coordination of some of the substantive issues, such as chemicals and biodiversity, should encourage an approach that is more consistent, effective and efficient. Cooperation among the secretariats of relevant conventions should subsist within

the context of procedures allowed by their respective conferences of the parties (see box 6).

Box 5. Common but differentiated responsibilities: Convention on Biological Diversity, United Nations Framework Convention on Climate Change, and 1995 Fish Stocks Agreement

The concept of common but differentiated responsibilities is embodied, for example, in the Convention on Biological Diversity, which makes the implementation of obligations undertaken by developing countries dependent on the effective implementation by developed countries of their commitments to providing new and additional financial resources, as well as to providing access to and transfer of technology on fair and the most favourable terms.

The idea of common but differentiated responsibilities, and respective capabilities, is set forth in article 3, principle 1, of the United Nations Framework Convention on Climate Change to guide the Parties in the implementation of the Climate Change Convention. The Convention recognizes the special circumstances and needs of developing countries, and then structures the duties and obligations to be undertaken by the States Parties accordingly.

Another example of these concepts is found in the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (document A/50/550, annex I). Its part VII deals with the requirements of developing States in relation to conservation and management of the fish stocks concerned, and elaborates upon the purposes of cooperation and the forms it shall take, such as joint venture arrangements. The Agreement envisages the establishment of special funds to assist developing States in its implementation.

Box 6. Coordination among conventions

One of the original purposes of the Convention on Biological Diversity was to make sense of the myriad of international agreements on biological conservation created in the past two decades. At the second meeting of the Conference of the Parties to the Convention (1995), the Conference of the Parties requested the Executive Secretary of the secretariat of the Convention to enter into collaborative arrangements with other biodiversity-related secretariats, with a view to examining the ways in which other conventions could help in realizing the objectives of the Convention on Biological Diversity (see document A/51/312, annex, annex II, decision II/13). Such arrangements, once concluded, could also help in reinforcing institutional cooperation between biodiversity-related organizations.

In 1996, the Executive Secretary of the Convention on Biological Diversity signed a Memorandum of Cooperation with the secretariats of the Ramsar Convention, the Convention on the Conservation of Migratory Species of Wild Animals and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Another example of the recognition of the need for coordination can be found in the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, which was adopted in June 1994. The Convention emphasizes the need for integrated cross-sectoral responses to the problem of land degradation. Its article 8 refers to the need for coordination with other conventions, in particular the conventions on biodiversity and climate change.

IV. UNFULFILLED EXPECTATIONS

Development of international law for sustainable development

16. The development of international law for sustainable development has been furthered by the negotiation of new integrative instruments, and the adoption and implementation of others. On the national level, implementation of international treaties in the field of sustainable development through national legislation remains piecemeal. Integrative and participatory strategies need to be further developed. The lack of secure, sustained and predictable financial resources, insufficient institutional capacity and human resources and inadequate access to technologies may hinder implementation and compliance with international legal instruments. It is also perceived that the unprecedented rate at which new international legal instruments are being adopted exceeds capacity (of, in particular, some developing countries) to implement these instruments.

17. Complete compliance with international treaties on sustainable development has not been attained. Factors contributing to this deficiency include lack of political will, unavailability of sufficient financial means, lack of full understanding of the exact obligations of the instrument, and the compressed time schedule of many negotiations, which may leave room for multiple

interpretations of the agreed text, and this may give rise to potential disputes. In these respects, it would be advisable if national compliance plans containing specific and measurable benchmarks were developed at the time of ratification, which would include the need for financial or technical assistance.

18. It may be only after an instrument has been negotiated and signed that the full range of consequences, including the need for financial and technical resources, emerges. The obstacles to compliance are not always taken fully into account from the beginning of the negotiating process.

19. Another constraint resulting in inadequate use of funds may arise from the lack of coordination at the national level of States, among developed as well as developing countries, between the national and the local level, and among ministries themselves. Clashing competencies, indistinct responsibilities and vagueness about the source, goal and amount of financial obligations may hamper implementation and compliance.

Recognition of the special situation of developing countries

20. Financial and technical support has furthered the participation of developing countries in negotiation and implementation of international agreements, but the support is insufficient for the task, particularly in view of the complexity of integrative instruments which demand greater expertise in a wide range of areas. Although assistance in capacity-building takes place, there is a great need for more support.

21. The funds available for assistance are sometimes considered to be insufficient, and exploration of additional sources of financial resources is encouraged, including mobilization of private sector financing. Availability of new funds or adequate replenishment of existing funds is a serious matter of concern. For example, the Economic and Social Commission for Asia and the Pacific and the Economic and Social Commission for Western Asia both reported that several countries in their region expressed strong concerns regarding their problems in the implementation of and compliance with conventions due to the administrative burden imposed, and the lack of institutional and technical capacities and financial resources.

Coordination and cooperation in the implementation of international agreements

22. The Commission on Sustainable Development, at its second session, noted the need for coordination and more efficient structural arrangements among the secretariats of conventions related to sustainable development. At its fourth session, the Commission on Sustainable Development recognized the need for consolidation and integration of procedures, and for cooperation among the secretariats of different conventions to this end.

23. UNEP and ECE have each been successful in strengthening coordination among the conventions that they administer. Overall, however, the initial trend towards administrative coordination of international agreements in the field of sustainable development has not materialized; some convention secretariats, once housed under one roof, are now being dispersed to different countries and

continents as a result of political decisions taken by the respective conferences of the parties. Other reasons why such coordination and cooperation have not fully developed are traceable, inter alia, to the specific goals of various conventions, their different membership, the fact that representatives of diverse ministries or other bodies of individual countries participate in the activities of the conventions, and the fact that secretariats are administered by different institutions.

24. Harmonizing or streamlining of reporting requirements under the various conventions is considered a priority by many States. Implementation of activities undertaken under the various conventions needs to be mutually supportive, and unnecessary duplication of activities needs to be avoided, while coordination could be enhanced among the respective programmes of work. Subjects such as intellectual property rights, fisheries, trade in chemicals and wastes, and financial arrangements, among others, are approached with a different focus in more than one international legal instrument, and require further cooperation and coordination.

V. TRENDS AND EMERGING PRIORITIES

25. There is a growing recognition of the importance of participation and involvement of non-governmental organizations, other non-State actors and the public at large (see box 7). They bring matters of concern to the attention of national policy makers; they mobilize and inform the public; they set new and challenging issues in the international agenda. An important issue that needs to be addressed during the preparatory stages of every international conference is the relationship between States and non-governmental organizations. Non-governmental organizations and State representatives have been able to meet to discuss, and to reach a basic understanding on, common concerns and approaches. The follow-up to such understandings includes policies set at State level, and it is regarded as more and more important for non-State actors, including local communities, to be closely involved in compliance and implementation at the national level. International financial institutions constitute another example of significant participation: they may offer States incentives to comply with agreements and they are in a position to require compliance as a condition of assistance. They can help build capacity and engage communities in implementing agreements.

Box 7. Ramsar Convention Strategic Plan

The meeting of the Contracting Parties to the Ramsar Convention, held in March 1996, adopted a comprehensive Strategic Plan, 1997-2002, which has two main purposes: to encourage implementation of the treaty and its multitude of guidelines which have been adopted over the years, and to involve as many actors as possible in its implementation, varying from government personnel to non-governmental organizations and local communities.

26. Non-State actors have become present and manifest in the intergovernmental policy-making process. For example, contributions from the scientific community on the natural linkages within ecosystems and between environment and economic activity have pushed such major issues as the ozone layer, climate change and biodiversity into the international legal agenda.

27. The possibility that non-State actors could help fulfil treaty obligations is not being tapped. Other non-State actors, including especially industry, and non-profit and non-governmental organizations, have an increasing stake in the sustainable development dialogue and are able to bring matters of concern to the attention of international and national policy makers, and to mobilize and inform the public and the scientific community. Intergovernmental organizations and local authorities, among others, have an important function in implementing international agreements and are positioning themselves to play a more active role in negotiating processes. ECE has been entrusted with drafting a convention on access to environmental information and public participation in environmental decision-making.

28. There has been a change of emphasis from the development of new international legal instruments to the effective implementation of and compliance with existing agreements. With the increase in international legal instruments related to sustainable development during the past few years, there is concern that the capacity of countries to implement and comply with all of those to which they are a party has not kept pace with commitments. There is a related trend discernable towards non-binding instruments, such as codes and guidelines, for example, the International Organization for Standardization (ISO) 14000 standards.

29. Related to this is the changing role of the secretariats of international legal instruments. Implementation and progress in compliance could be enhanced by closer cooperation with implementing States. It might be useful for secretariats to focus efforts on maintaining and enhancing the support of such States.

30. The growing awareness of global interdependence in many aspects includes the perception that international law has to redirect itself towards integration and interaction among its various branches. For instance, interaction between various branches of international law, such as environmental law and trade law, and trade and labour standards, as well as environmental law and human rights, can be viewed as an emerging priority. There is an increasing recourse to economic instruments and other incentives to expand participation in and enhance compliance with relevant legal instruments; continuing attempts to harmonize environmental and trade regimes; and proliferation of differentiated responsibilities. An integrated intergenerational equity approach should constitute an underlying part of any sustainable development strategy in international law, so as to promote the concept of continuity and one world as opposed to notions of national interests, negotiations and borders.

31. Environmentally-oriented international legal instruments rely increasingly on scientific findings. Various international legal instruments have set up scientific and/or technical bodies. They have been challenged to draw upon the work of the wider scientific community, including other intergovernmental forums, and to have their expertise so integrated as to guide the policy of their respective convention bodies.

Notes

[1] Report of the United Nations Conference on Environment and Development, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex II.

[2] Ibid., annex I.

[3] World Commission on Environment and Development, Our Common Future (Oxford and New York, Oxford University Press, 1987).

[4] See United Nations Environment Programme, Convention on Biological Diversity (Environmental Law and Institutions Programmes Activity Centre), June 1992.

[5] A/AC.237/18 (Part II)/Add.1 and Corr.1, annex I.